

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Initial Regulatory)	
Flexibility Analysis)	

**REPLY COMMENTS OF THE
SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION ON THE
INITIAL REGULATORY FLEXIBILITY ANALYSIS**

The South Dakota Telecommunications Association (SDTA) hereby submits reply comments on the Commission's Initial Regulatory Flexibility Analysis (IRFA) in the above-captioned proceeding. SDTA responds to the comments of Verizon Wireless and Sprint Nextel Corporation (Sprint Nextel) as discussed herein.

In its initial comments, SDTA addressed the transport issue raised by the Commission in the IRFA. Namely, the Commission stated that porting beyond wireline rate center boundaries may cause small or rural carriers to incur transport costs associated with delivering calls to ported numbers served by distant switches. SDTA demonstrated that the transport issue results from the Commission's decision in the *Intermodal Order* to require location portability. SDTA also demonstrated that the burden on small local exchange carriers (LECs) of transport is very significant. SDTA urged the Commission to exempt small entity LECs from the intermodal porting requirement until the Commission issues its order concerning transport.

Sprint Nextel and Verizon Wireless generally argue that the Commission should move forward with a final regulatory flexibility analysis with no change to the *Intermodal Order* and the obligations it imposes on small carriers. In support of their positions, Sprint Nextel and Verizon Wireless argue that the rural carriers' concerns about transport costs are not related to LNP; that intermodal porting does not harm rural LECs; and that the lack of porting harms wireline customers. As demonstrated in SDTA's response to the Initial Regulatory Flexibility Analysis and herein, these arguments are without merit.

Sprint Nextel argues that the rural LEC complaint concerning transport costs is "the result of preexisting obligations under the Act and implementing FCC rules governing interconnection and reciprocal compensation"¹ and that it is not related to the implementation of LNP. Sprint Nextel appears to argue that because wireless carriers can indirectly interconnect with rural LECs, which results in an interconnection point outside of the LECs' networks, the LECs already must pay for the cost of transport. This clearly is not the case in South Dakota.

As an initial matter, SDTA demonstrated in its comments in this proceeding and in the Intercarrier Compensation proceeding that there is no obligation under the Act for LECs to transport local traffic outside of the local calling area or service area. In addition, SDTA demonstrated that in South Dakota, when a wireless carrier does not have a direct connection with a rural LEC and its point of interconnection is outside of the LEC's local service area, all calls to that wireless carrier are routed by the LEC to an interexchange carrier. Accordingly, the LECs do not pay for transporting calls outside of

their established local calling areas and, in many cases, no facilities are currently in place that would permit the transport of such calls on a local basis. Moreover, the South Dakota LECs have interconnection agreements with wireless carriers in South Dakota that permit these routing arrangements. Thus, contrary to the arguments of Sprint Nextel, transport is not an issue, at least for South Dakota rural LECs, pursuant to the interconnection requirements in the Act. Rather, transport has become an issue as a direct result of the *Intermodal Order* where the Commission effectively ordered location portability without considering what facilities would be necessary to accomplish this location portability and without determining how such facilities would be provided. Accordingly, this issue must be resolved before small entity LECs are required to comply with the *Intermodal Order*.

Sprint Nextel also argues that an incumbent LEC's loss of customers is not a legitimate consideration for the Commission in the Regulatory Flexibility Analysis (RFA) and if the Commission considers a rural LEC's loss of customers it also must consider the additional customers that rural LEC competitors will gain from porting. Because a loss of customers can impact a small entity, it is not clear why it is not a legitimate consideration in an RFA. In any event, rural LECs will not gain customers from intermodal porting because intermodal porting currently is not fully reciprocal. Rather, in the *Intermodal Order*, the Commission found that because of the limitations on the ability of wireline carriers to port-in numbers from distant rate centers, the Commission will not hold wireline or wireless carriers liable "for failing to port under

¹ Sprint Nextel Comments in Response to the Initial Regulatory Flexibility Analysis at 6 (Sprint Nextel Comments).

these conditions.”² Therefore, although under the terms of the *Intermodal Order*, wireline numbers from any rate center must be ported to a wireless carrier whose coverage area overlaps the rate center in which the customer’s wireline number is provisioned, wireline carriers only can port-in a number from a wireless carrier with numbers in the same rate center.

Finally, Verizon Wireless argues that the costs of implementing LNP are not significant and that the Commission has provided cost recovery mechanisms for small carriers.³ Verizon Wireless also states that wireline customers are being harmed because small LECs are not required to implement LNP. In support of this position, Verizon Wireless states “[m]any landline customers also have benefited from intermodal LNP, including the customers of small LECs who ported their numbers before the stay took effect...”⁴ and that “[d]uring the first 15 months of intermodal LNP, Verizon Wireless ported in over 75,000 numbers from landline customers.”⁵ Accordingly, Verizon Wireless argues that no further action by the Commission is required in the RFA.

SDTA believes Verizon Wireless is wrong on both points. As an initial matter, Verizon Wireless’ unsupported and general statements concerning demand should be given little weight since Verizon Wireless failed to provide any specific information

² *Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-to-Wireless Porting Issues*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 23697, at ¶22 (2003). (*Intermodal Order*).

³ Verizon Wireless’ Comments on Initial Regulatory Flexibility Analysis in Telephone Number Portability Proceeding at 2-3 (Verizon Wireless Comments).

⁴ Verizon Wireless Comments at 5.

⁵ Verizon Wireless Comments at 6.

about the number of rural wireline customers it has ported.⁶ Further, Verizon Wireless' unsupported statements are refuted by the National Telecommunications Cooperative Association survey, which demonstrates that demand for intermodal porting in rural LEC service territories is minimal or nonexistent and the evidence presented by SDTA in its comments concerning the total lack of intermodal LNP demand in West River Telecommunications Cooperative (WRTC), a rural LEC in North and South Dakota.⁷

Verizon Wireless' claims also were refuted in proceedings before the South Dakota Public Utilities Commission (SDPUC) in which the LECs asked the SDPUC to suspend their LNP obligations. In the proceedings, the South Dakota LECs submitted cost studies demonstrating that the per line cost of implementing LNP would be quite significant. Further, the SDPUC agreed that LNP would impose burdens on the LECs and, in light of the lack of demand for LNP, the SDPUC concluded that the LECs' suspension requests were in the public interest. Accordingly, contrary to Verizon Wireless' assertions, intermodal LNP imposes significant costs on LECs which cannot be justified in light of the total lack of demand on the part of customers for the service and wireline customers will not be harmed if there is a further delay in requiring small LECs to implement intermodal LNP.

⁶ It seems fair to presume that since this information should be in the possession of Verizon Wireless and it was not provided, there simply are not a significant number of intermodal ports in rural LEC areas.

⁷ In its comments, SDTA showed that WRTC has had zero intermodal ports in South Dakota and only 4 in North Dakota over a 15 month period.

Based on the foregoing and on its initial comments filed in this proceeding, SDTA urges the Commission to exempt small entity LECs from the intermodal porting requirement until the Commission issues an order concerning transport and sufficiently clarifies transport obligations in LNP circumstances.

Respectfully submitted,

**SOUTH DAKOTA TELECOMMUNICATIONS
ASSOCIATION**

By: _____/s/_____

Richard D. Coit
Executive Director and General Counsel
South Dakota Telecommunications Association
320 East Capitol Avenue
Pierre, SD 57501
(605) 224-7629

Benjamin H. Dickens, Jr.
Mary J. Sisak
Blooston, Mordkofsky, Dickens
Duffy & Prendergast
2120 L Street, NW
Washington, DC 20037
(202) 659-0830

Dated: September 6, 2005

CERTIFICATE OF SERVICE

I, Althea Pierce, do hereby certify that I have on this 6th day of September, 2005, had copies of the Reply Comments of the South Dakota Telecommunications Association on the Initial Regulatory Flexibility Analysis, delivered to the following, via first-class, U.S. mail:

Luisa L. Lancetti
Charles W. McKee
Sprint Nextel Corporation
401 9th Street, NW, Suite 400
Washington, DC 20004

Scott Freiermuth
Sprint Nextel Corporation
6450 Sprint Parkway
Overland Park, KS 66251

John T. Scott, III
Anne E. Hoskins
1300 I Street, NW
Suite 400 West
Washington, DC 20005

_____/s/_____
Althea Pierce